IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6800 OF 2003

Tekam P. Wadhwani ..Petitioner
Vs.
Shakuntala R. Shetty ..Respondent.

...

Mr. P.S. Dani for the Petitioner.
Mr. G.S. Godbole i/b Mr. V. R. Tripathi for the Respondent.

...

CORAM : DR.D.Y.CHANDRACHUD, J.

12th April, 2006.

P.C.:

Called for speaking to the Minutes of the Order.

The order of this Court dated 17th October, 2003 was passed on the statement made by counsel appearing on behalf of the Respondent on instructions. The first part of the order records the statement as follows :

> "On 16th October, 2003, the Petition was mentioned before this Court on behalf of the Respondent and Learned Counsel appearing on his behalf stated that he has received instructions that the Respondent does not wish to press the application for amendment which has been made before the Court of Small Causes or to

> advance the case which has been set up in the amendment. ”

Hence, the statement that was made before the Court was that the application for amendment which was made before the Court of Small Causes was not being pressed and the case which was set up in the amendment would not be advanced. Again this Court further recorded what transpired during the course of the hearing to the following effect :

> “Today when the Petition was called out, Learned Counsel for the Respondent stated that the Respondent withdraws the application for amendment which was made before the Court of Small Causes and states that the Respondent hence shall not rely upon the case which was sought to be made therein.”

Thus it is clear that in two places in the order of the Court the statement of counsel for the Respondent has been recorded to the effect that (i) the application for amendment that was moved before the Court of Small Causes was being withdrawn and (ii) the Respondent shall not rely upon the case which was sought to be made in the application for amendment. The order of the Court is therefore clear in itself.

However, it is clarified that in response to the application for restoration of possession that has been moved by the Petitioner, if the Respondent seeks to lead evidence in support of the defence that has been made in the affidavit in reply, it would be for the learned Trial Judge to decide whether evidence should be permitted to be led on a case which has not been set up in the plaint.